

The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.

Paper No. 29

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

MAILED

JAN 19 2005

U.S. PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JAMES PRESCOTT CURRY

Appeal No. 2005-0509
Application No. 09/449,237

NOTIFICATION OF NON-COMPLIANCE REGARDING ORAL HEARING

Subsequent to a Notice of Appeal filed on April 8, 2003 (Paper No. 20), appellant filed an Appeal Brief on October 8, 2003, (Paper No. 23). A two page transmittal letter was filed concurrently with the Brief (Paper No. 24). Page 2 of the transmittal letter reads in part “[t]he total fee due is . . . (appeal brief fee, **fee for request for oral hearing**, plus extension fee, if any).” (Emphasis added). Subsequently, the fee for the oral hearing was charged to appellants’ account. This sentence contains the only indication of a Request for Oral hearing in this application.

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As per 37 CFR § 41.47(b) (previously 37 CFR § 1.194(b)¹), a request for an oral hearing must be filed in a separate paper.²

Since appellant's request for oral hearing was not filed in a separate paper as required by 37 CFR 41.47(b), a request for an oral hearing cannot be considered. However, the \$145 fee for the oral hearing which was submitted with the Notice of Appeal, is refundable under 37 CFR § 1.26 since it was paid by mistake or in excess of that required.

If appellant desires the \$145 fee to be refunded, a request for refund should be filed as soon as possible.

If appellant still desires an oral hearing, a petition under 37 CFR § 1.183 must be filed within two weeks of the mail date of this notice. Such a petition must include:

(1) a request to suspend the separate paper requirement of 37 CFR § 41.47(b),
(2) a showing of facts to establish that an extraordinary situation exists and that justice requires the separate paper requirement of 37 CFR § 41.47(b) be suspended or waived, and

¹ See NOTICE OF RULE CHANGE attached.

² 37 CFR § 41.47(b) provides in pertinent part:

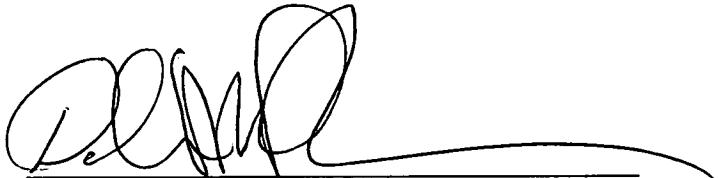
[i]f appellant desires an oral hearing, appellant must file, in a separate paper . . . a written request for such hearing accompanied by the fee set forth in § 41.20(b)(3) within two months from the date of the examiner's answer.

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(3) be accompanied by the petition fee set forth in 37 CFR § 1.17. This two-week time period for filing a petition under 37 CFR § 1.183 is not extendable under 37 CFR § 1.136(a)(1)(iv). The failure to timely file a petition under 37 CFR § 1.183 will result in the appeal being decided without an oral hearing (i.e., on brief).

BOARD OF PATENT APPEALS
AND INTERFERENCES

By:



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DMS/vsh

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